

Law case

Business



McCormick v Nowland (1985) ATPR 40-852 This case is to be contrasted with McCormick v Nowland (1985) ATPR 40-852 in which the vendor's real estate agent falsely represented that the vendor's house was made of brick and that the swimming pool in the back yard was adjacent to a public park. The Court here held that a real estate agent owes a duty of care to a purchaser with respect to the information supplied about the property.

Pincus J found that the agent had been negligent in respect of the information relating to the property and that the vendors, as principal were vicariously liable for the acts of their agent under the general law, because he found that the agent was acting within the authority of the vendor, at least insofar as it described the house to be built of brick Smith v Land and House Property Corporation (1884) LR 28 Ch D 7 Facts It holds that a statement of opinion can represent that one knows certain facts, and therefore one may have still made a misrepresentation.

Land and House Property Corp (LHP) contracted with Mr Smith to buy the freehold title of the Marine Hotel at Walton-on-the-Naze. Mr Smith had advertised that it was let to Mr Fleck," a most desirable tenant.

" Land and House agreed to buy the Hotel however Mr. Fleck, who had been overdue with rent, went bankrupt just before transfer of title. Land and House Property Corp. refused to complete the transaction, defending Smith's specific performance suit on the basis that the description of Fleck's "virtues" was grounds for misrepresentation.

Henjo Investments Pty Ltd v Collins Marrickville Pty Ltd Background facts

- The Plaintiff [Collins] bought a lease to a restaurant off the Defendant

[Henjo]. •The restaurant was operating illegally – it seated way more people than its license allowed.

•The Plaintiff was led to believe (via a signed card and by observation of the premises) that the illegal capacity was licensed. •The Plaintiff hired a lawyer to make sure everything was right with the license, but he didn't make any inquiries. The contract had both an entire agreement clause and a disclaimer of all prior representations. •After the transaction went through, the Plaintiff finally found out. conclusion •Exclusion clauses, such as disclaimers or entire agreement clauses, do not protect one against the statutory laws regarding misleading conduct.

•" It has been held that exclusion clauses, of which special conditions 6 and 7 are examples, cannot operate to defeat claims under s 52. "[5] •The conduct was misleading, and the Plaintiff wins.